Probably the weight of authority is with the view that such stipulations can only be considered as conditions, *Young* v. *Cowan* (Ark.), 204 S. W. 312; *Bennett* v. *Vinton Lumber Co.*, 28 Pa. Sup. Ct. 495; *Hartley* v. *Neaves*, 117 Va. 219; also reported and annotated in 1 Va. L. Reg. n. s. 25. Nor is a provision for reversion necessary at least in Texas, see *Adams* v. *Fidelity Lumber Co.*, 201 S. W. 1034 and Georgia, *Allison* v. *Wall*, 121 Ga. 822. The absence of such provision was held to prevent a reversion where no time was fixed in *Watt* v. *Baldwin*, 60 Mich. 622. There is little ground for quarreling with those courts which hold to the theory of reversion. Their decisions may work a hardship on the holder of the timber rights but any other would equally distress the owner of the land. The former is responsible for his own predicament. To hold him entitled to harass and embarrass the landowner indefinitely by threatened trespasses or legal proceedings would in the balance outweigh the undoubtedly self-imposed hardship to the vendee. The instant case is an illustration of the resuscitation of common law technicalities to ease the burden of deciding a hard case. The result is such as no sane person would contemplate at the time of contracting. In *Halstead* v. *Jessup*, *supra*, under similar circumstances, the court assuming the title to be in the vendee, allowed him to recover from the landowner in conversion for refusing him permission to enter, cut and remove the timber. It is submitted that the courts asserting the Alabama view must go the whole way as did the Indiana court in *Halstead* v. *Jessup*. Litigants are no longer satisfied with the determination of some nice point of law arising in their case, leaving the substantial question at issue and the equitable rights of the parties unsettled.

SALES—FAILURE TO DELIVER—EXCUSE—CONSTRUCTION OF CONTRACT.—Defendant sold wheat to plaintiff, contracting to deliver it "at" a certain public warehouse by a stated time. Before this time defendant took the grain to the warehouse, but as it was full it was impossible for him to store it there. This impossibility continued through the time in which delivery was to be made, and upon defendant declaring that he was relieved of his contract, plaintiff sued for damages. *Held*, (TOLMAN, J., dissenting), the impossibility did not relieve the defendant. *Farmers' Grain & Supply Co.* v. *Lemley* (Wash., 1919), 178 Pac. 640.

With the exception of a few well known, and fairly well defined, classes of cases, the rule as generally laid down in the older cases and by the text writers is that an intervening impossibility will not relieve the promisor on his agreement. 2 BENJAMIN ON SALES, 748-753; 2 PARSONS ON CONTRACTS (2d. Ed.) 823. See *supra*, p. —; *Isaccson* v. *Starrett*, 56 Wash. 18; *Stees* v. *Leonard*, 20 Minn. 494. However, the courts are today tending to relax this very stringent rule, relieving the promisor when it appears "that the contingency which makes the contract impossible of performance is such that the parties to the contract, had they actually contemplated it, would probably have regarded it as so obviously terminating the obligation as not to require expression." 1 COL. L. R. 533; *Clarksville Land Co.* v. *Harriman*, 68 N. H. 374. See comprehensive annotation thoroughly reviewing the cases in L. R. A. 1916 F, 10. But no matter how this rule may be considered, it should be

based, like all the rules of contract law, on the intention of the parties; and it is this which the courts should seek. Hence, if by defendant's agreement to deliver the grain "at" the warehouse it was the intention of the parties that it should be delivered "in" the building, and it was the further understanding that defendant's promise to put it there was in the nature of an absolute undertaking, the contingency which arose to prevent his performance should not relieve him. The prevailing opinion impliedly assumes, and probably correctly so, that the grain was to be placed "in" the warehouse, for it entirely ignores this consideration in construing the contract. The dissenting opinion, however, holds that when defendant took the grain to the warehouse he had done all that was required of him, and in support of this cites *Dockman* v. *Smith,* 21 Ky. (5 T. B. Mon.), 372, which holds that a covenant to deliver tobacco "at" a warehouse does not require the obligor to deliver it "in" the warehouse. But in *Halstead* v. *Woods,* 48 Ind. App. 127, where a note was made payable at a certain bank, it was held that it was payable "in" the bank. See 1 WORDS AND PHRASES, 595.

WILLS — EXECUTION — "PRESENCE OF TESTATRIX". — The attestation of the will in question took place in a room connected with the room in which the testatrix was by an archway about six feet wide. The testatrix could have seen the attaching of the signatures had she had her eyesight; but she was blind. The Missouri statute required attestation in "the presence of the testator". *Held,* that the statute was satisfied. The rule for a blind testator is the same as that which would be applied to him if he had sight. The purpose of the statute is that the testator may have knowledge that the witnesses have signed the instrument which he intends as his will. This protection is ordinarily afforded by observation—which a blind person cannot have. All the other senses are inadequate to avoid the possibility of substitution. The statute does not require more for a blind person than for a person who can see. Wade, J., dissenting. *Welch* v. *Kirby* (Circuit Ct. of App., 1918), 255 Fed. 451.

The court correctly states the purpose of the statute to be that the testator may have knowledge that the instrument signed is the one which he intends as his will. But sight is only one of the ways in which the testator may gain this knowledge. It is no doubt the best assurance. Nevertheless, even vision may not be entirely adequate in certain cases. The courts have set it down as the exclusive test merely because it happens to be the usual and the safest test. It is well established now that an attestation is in the presence of the testator if he could have seen the act even though he did not see it done because of some indifference or indisposition to take visual notice. *Re Snow,* 128 N. C. 100; *Hill* v. *Barge,* 12 Ala. 687. However, these courts seem to ignore the fact that this knowledge may be gained by means of senses other than sight. In *Cunningham* v. *Cunningham,* 80 Minn. 180, the testator could have seen if he had moved about two or three feet but the court held the attestation to have been made in his presence because it was "within the testator's voice; he knew what was being done". The court cited with approval the statement in *Cook* v. *Winchester,* 81 Mich. 581 that in the definition of